

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawai'i 96813

October 23, 2015

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

SUBJECT: Establish a Volunteer Agreement with Friends of the Future at Lapakahi State Historical Park, North Kohala, Island of Hawai'i [TMK: (3) 5-7-01: por. 22].

The Curator Program was initiated in 1987 by the State Historic Preservation Division (SHPD) and the Division of State Parks to encourage community involvement in the care and management of historic and cultural sites on State-owned properties. Over the years, the volunteer program has expanded to include natural resources in the parks and projects such as educational programs, interpretation, and site restoration. The agreements developed between the organization and the Department of Land and Natural Resources (DLNR) outline the responsibilities of the volunteer organization for a 5-year term.

Lapakahi State Historical Park (SHP) was officially established in 1973 and now consists of 279 acres of State-owned land set aside to preserve, protect, and interpret the significant cultural complex of archaeological sites along the leeward coast of North Kohala on Hawai'i Island. The park corresponds to the makai portion of the Lapakahi Complex which was listed on the National Register of Historic Places in 1973. The complex is significant for the density and diversity of archaeology sites associated with a traditional ahupua'a system that encompasses the coastal fishing settlements to the upland agricultural fieldsystem. Approximately 50 acres of the park at Koai'e Cove are open for public visitation. Within this archaeological complex are housesites, canoe sheds, enclosures, ko'a (fishing shrines), and burial sites. A mile-long interpretive trail has been constructed through this complex to interpret traditional coastal habitation within the larger theme of the Hawaiian ahupua'a. In addition, native Hawaiian plants have been planted throughout this central park area. A small interpretive shelter with exhibits and displays was constructed in 2000. The remainder of the park remains undeveloped.

State Parks entered into a 5-year volunteer agreement with Nā Haumana La'au Lapa'au o Papa Auwae (NHLLOPA) in December 2010. The group consists of students who trained under Henry "Papa" Auwae from 1994 to 2000. This agreement will expire in December 2015 and NHLLOPA has requested to continue to assist State Parks with the care, management of selected cultural resources and plantings in the Koai'e Cove section of the park. However, the new agreement will be with the Friends of Future, a 501(c)(3) organization formed in 1991 to create trust and harmony amongst the diverse cultures of Hawai'i. Friends of the Future provides organizational support to more than 60 community-based programs, including NHLLOPA and their stewardship of the Koai'e Cove area of Lapakahi SHP. Because of the affiliation between these organizations since 1994, we believe the Friends of Future is an appropriate partner for this volunteer agreement and will provide the 501(c)(3) status being sought in these agreements.

Since the establishment of the curatorship with NHLLOPA in 2010, the haumana have held monthly work days in which they have replaced the old bamboo fence protecting Koai'e Bay, cleaned and maintained the thatched hale constructed for Henry Auwae, helped Park staff with the removal of stones blocking the trails after the rock walls were destroyed by heavy storm waves, cleared areas of invasive plants, and planted la'au (medicinal plants). All tasks and projects are guided by cultural protocols. Presently the haumana are replacing the fence protecting the pakaukau site, assisting the Park in installing new water lines, and planning to re-thatch the hale.

In 1994, the late Henry "Papa" Auwae, po'okela (master) la'au lapa'au, initiated an annual gathering of practitioners from all the islands. The haumana with the support of Friends of the Future and other organizations, have continued these annual gatherings at Lapakahi SHP as a cultural mandate. This will be their 22nd year.

RECOMMENDATION:

State Parks encourages community involvement and assistance with the care, management, and interpretation of the resources in the parks. The Friends of the Future has indicated a willingness to assist with the maintenance of the Koai'e Cove area in coordination with State Parks and NHLLOPA. State Parks recommends that the Board grant approval for DLNR to enter into a 5-year agreement with the Friends of the Future to allow them to care for the Koai'e Cove area of Lapakahi State Historical Park subject to the following conditions:

1. Review and approval of the agreement by the Department of the Attorney General.
2. The Friends of the Future prepares the required environmental and regulatory documents and obtains approvals and permits that may be required prior to conducting any major improvements or restoration of historic sites.
3. Amendments and renewals of the volunteer agreement are delegated to the Chairperson.
4. And such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



CURT A. COTTRELL
State Parks Administrator

APPROVED FOR SUBMITTAL:



SUZANNE CASE, Chairperson

Attachment: Draft Agreement with the Friends of the Future

**STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS**

AGREEMENT

THIS AGREEMENT, executed on the respective dates indicated below, is effective as of _____, 201____, between the Board of Land and Natural Resources, State of Hawai'i (hereafter "STATE"), whose address is 1151 Punchbowl Street, Honolulu, Hawai'i 96813, and Friends of the Future (also referred to herein as "FOF"), whose address is P.O. Box 2655, Waimea, Hawai'i 96743, for and regarding the Koai'e Cove area within Lapakahi State Historical Park, ahupua'a of Lapakahi, district of North Kohala, island of Hawai'i, State of Hawai'i [TMK: (3) 5-7-01: por. 22].

INTRODUCTION

The STATE is the owner of Lapakahi State Historical Park which encompasses 279 acres between Akoni Pule Highway and the shoreline on the leeward side of North Kohala. The park is situated 0.5-mile south of Māhukona and 12 miles north of Kawaihae. This agreement addresses the Koai'e Cove section of the park under the jurisdiction of the Division of State Parks (Attachment 1). This agreement for assistance with the maintenance, management, restoration, and interpretation of the Koai'e Cove area is in the public interest and serves a public purpose. The FOF will perform all duties and responsibilities without pay from the STATE.

Lapakahi State Historical Park was officially established in 1973 to preserve, protect, and interpret the significant cultural complex of archaeological sites which tell the story of pre-contact coastal settlement along the leeward coast of Hawai'i Island. Several archaeological projects have provided information about the occupation of this coastline from the pre-contact period until that 1920s. The park corresponds to the makai portion of the Lapakahi Complex which was listed on the National Register of Historic Places in 1973. The complex is significant for the density and diversity of archaeology sites associated with a traditional ahupua'a system that runs from the coastal fishing settlements to the upland agricultural fieldsystem.

RESPONSIBILITIES OF THE FRIENDS OF THE FUTURE

1. Coordinate all actions and activities undertaken in the execution of this Agreement with State Parks.

2. Designate a project coordinator(s) who shall coordinate all work projects on-site and ensure that all participants complete State Parks' volunteer and release of liability forms (Attachments 2 and 3) and provide the completed waiver forms to State Parks.
3. Submit an annual report of activities and volunteer hours performed under this Agreement to State Parks.
4. Maintain the Koai'e Cove area within Lapakahi State Historical Park by weeding and maintaining the native plantings for la'au lapa'au, maintaining and restoring the thatched hale and pakaukau sites, maintaining the bamboo fencing placed at various locations to protect sensitive cultural sites, and assist with the maintenance of park trails and rock walls.
5. Develop and implement a written training and safety plan for the use of tools, equipment, machinery, and herbicides by volunteers when removing vegetation, installing rock features, planting new vegetation, and maintaining the project area. The following guidelines shall be followed:
 - a. Chainsaws, weed whackers, and other hand tools may be used. The cut debris will be chipped or composted and either used on-site or transported off-site. There is to be no burning within the site area.
 - b. A herbicide with dissipation properties such as Round-up, may be used. All instructions for proper application of such herbicides shall be followed.
 - c. Vegetation removal shall be done with minimal ground disturbance and include steps to minimize erosion and stabilize the ground surface.
 - d. The specifics of the vegetation removal, use of herbicides, and any use of machinery shall be discussed and approved by State Parks.
 - e. The safety plan must be reviewed and approved by State Parks prior to work at the Park. This plan shall include the use of safety gear and protection of the public when working in the Park. Safety training and briefings are required prior to any work and use of tools by members and/or volunteers.
6. Periodically monitor the condition of the Koai'e Cove area. Where possible, attempts shall be made to prevent vandalism and damage. Should any damage be discovered, the FOF will notify State Parks as soon as possible.
7. The FOF may prepare and implement a landscape plan to expand or alter plantings within the Koai'e Cove area. Any planting or landscaping plan shall be reviewed and approved in writing by State Parks prior to implementation.

8. The FOF may prepare and install interpretive devices and displays, contingent upon prior written approval of an interpretive plan by State Parks. If a historic property is involved, prior written approval by the State Historic Preservation Division (SHPD) in accordance with Chapter 13-277, HAR is also required.
9. The FOF may provide educational and interpretive programs in the park, including leading interpretive tours and service projects in the park based on written interpretive plans, educational curriculum, and other materials that have been approved in writing by State Parks.
10. The FOF may install fencing and appropriate cultural features in the Koai'e Cove area in compliance with an approved plan if the FOF receives prior written approval from State Parks and obtains all required permits.
11. The FOF may assist State Parks with various management projects, such as the installation of regulatory signs that include reference to State law and DLNR rules under the guidance and approval of State Parks.
12. With State Parks written approval, the FOF may retain the services of a professional archaeologist for the purposes of conducting archaeological work needed to fulfill the objectives of this agreement or to contribute to State Parks meeting the requirements of the historic preservation project review process (§6E-7 and §6E-8, HRS; Chapter 13-275, HAR). The archaeologist shall meet the professional qualifications established by §13-281-3, HAR, and hold a valid permit to conduct archaeological activities in Hawai'i in accordance with §13-282-3, HAR. If any state funds are applied, all applicable state procurement laws shall be followed.
13. Procure, at their own cost and expense, and maintain during the entire period of this Agreement, comprehensive general liability insurance, issued by an insurance company or companies licensed or authorized to do business in the State of Hawaii, with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawai'i, Department of Land and Natural Resources ("DLNR"). The insurance shall cover any and all activities and responsibilities set forth in this Agreement.

Prior to or upon execution of this Agreement, the FOF shall furnish DLNR with a certificate(s) of insurance showing the insurance policy or policies. If the scheduled expiration date of the current insurance policy is sooner than the specified termination date of this Agreement, the FOF shall, upon renewal of the insurance policy or policies, provide DLNR with a copy of the renewed insurance policy or policies. This insurance shall not be cancelled, limited in scope or coverage, or nonrenewed until after thirty (30) calendar days written notice has been given to DLNR. DLNR may, at any time, require the FOF to provide DLNR with copies of the insurance policy or policies that are or were in effect during this Agreement.

The Chairperson of the Board shall retain the right at any time to review the coverage, form, and amount of insurance required by this Agreement. If, in the opinion of the Chairperson of the Board, the insurance provisions in this Agreement do not provide adequate protection for the State of Hawai'i, the Chairperson may require the FOF to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Chairperson's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Chairperson shall notify the FOF in writing of changes in the insurance requirements and the FOF shall deposit copies of acceptable insurance policy or policies and certificate(s) thereof, with incorporated changes within thirty (30) calendar days of receipt of the notice.

The procuring of the required policy or policies of insurance shall not be construed to limit liability under this Agreement nor to relieve or release the FOF of the indemnification provisions and requirements of this Agreement. Notwithstanding the policy or policies of insurance, the FOF shall be obligated for the full and total amount of any damage, personal injury, wrongful death, or loss arising out of, or in connection with the activities and responsibilities under this Agreement.

14. The FOF shall defend and indemnify the State of Hawai'i, its officers, employees, agents, and assigns, and hold each of them harmless from any claims and demands from any person(s) arising out of or based on any personal injury, death, or property damage arising directly or indirectly from the activities of its officers, members, volunteers, and contractors set forth in this Agreement. This provision shall survive the termination of this Agreement.

15. The FOF, their parents, subsidiaries and affiliates, successors, assigns, and members remise, release, and forever discharge the State of Hawai'i, and its officers, employees, agents, and assigns, acting in their official capacities with due diligence, from any and all claim(s), demand(s), or cause(s) of action on account of the death or injury to its officer(s) or employee(s), of the property of its officer(s) or employee(s), that may be due or attributable to the activities as set forth in this Agreement. This provision shall survive the termination of this Agreement.
16. The FOF, their parents, subsidiaries and affiliates, licensees, successors, assigns, and members assume all risk of bodily injury, wrongful death, and/or property damage that may be due or attributable to the activities as set forth in this Agreement and hereby waive any and all claims against the State of Hawai'i, its officers, employees, agents, and assigns.
17. Use of the park shall be in accordance with all of the Rules and Regulations of the Division of State Parks (Chapter 13-146, HAR) and all other applicable rules and regulations of the Department of Land and Natural Resources as well as all other applicable rules, regulations and permit requirements of the County of Hawai'i, State of Hawai'i, and Federal Government, including requirements under HRS Chapter 343 concerning environmental and cultural review prior to any actions that would trigger compliance with this statute.
18. The FOF may sponsor volunteer projects in addition to their regular maintenance responsibilities but State Parks must approve and shall be notified 5 working days in advance of large volunteer projects. A permit may be required for any activity involving over 25 individuals.

SPECIAL CONDITIONS

The members and volunteers of the FOF shall not:

1. Conduct or permit commercial activity, including the sale of any items or advertising of commercial products, to be conducted in conjunction with the partnership and maintenance of the site;
2. Undertake or permit fund raising activities at the site;
3. Permit participants to possess, display, use or consume alcoholic beverages or illegal drugs at the site;
4. Permit any temporary or permanent residence to occur at the site;
5. Cause any significant disruption to normal park usage; or

6. Undertake site improvements unless these tasks are covered in this Agreement or in later amendments to this Agreement.

RESPONSIBILITIES OF THE STATE

1. DLNR, in its sole discretion, will continue to manage and be responsible for the area covered by this Agreement and may issue permits, including commercial permits, conduct archaeological and other investigative activities, install interpretive devices and regulatory signs, and implement management plans. DLNR will consult with the FOF on these activities as deemed appropriate by the STATE.
2. State Parks agrees to provide information in its possession relating to the park, including but not limited to archaeological and historical information, surveys conducted of archaeological sites or features which are not of a confidential nature, draft environmental impact assessments and statements, and plans regarding existing or proposed future uses of lands within the park. The information State Parks will provide is limited to information that is not confidential.
3. The assistance of State Parks may be requested for large clearing and hauling projects. State Parks assistance may be requested for the purchase of supplies and equipment for work conducted at the site, including the purchase and use of herbicides, with the understanding that State resources may be limited or restricted. Such requests should be coordinated with the State Parks Hawai'i District Parks Superintendent.
4. In accordance with §6E-7 and §6E-8, HRS, and Chapter 13-275, HAR, State Parks shall be responsible for obtaining concurrence from the State Historic Preservation Division (SHPD) to proceed with proposals under this agreement that could have an effect on historic properties in the park and for submitting for review and approval any reports or plans.

RESTRICTIONS ON THE ROLE OF THE FRIENDS OF THE FUTURE

1. Tasks not specified in this Agreement may not be undertaken. The FOF may propose amendments to this Agreement to undertake other tasks. These proposed amendments must be approved by the Board of Land and Natural Resources or its designee.
2. It must be emphasized that failure to get approval of additional tasks will likely lead to the revoking of this Agreement and the potential imposition of civil or criminal penalties under sections 6E-11, 6E-11.5, and/or 6E-11.6, HRS, if historic properties are damaged or altered without prior approval of the department.

3. It is the role of the FOF to help protect the Park resources covered by this Agreement and to help provide public access for the park's visitors. The FOF is not the owner of the Park and cannot restrict access.

CHECKS TO ENSURE PROPER CURATION

1. The FOF and the STATE, through the Division of State Parks, will agree on a schedule for when work will be performed. The STATE will monitor the progress of the work and maintain close communication with the FOF. The FOF will notify the STATE in writing if a schedule change is necessary and obtain written approval of said schedule change from the STATE.
2. The STATE will make a minimum of two (2) field checks per year to see that proper maintenance is being done. If it is determined that proper maintenance is not taking place, the STATE will notify the FOF in writing of the problem(s) and will provide suggestions to correct the problem(s). The FOF will be allowed a reasonable time to correct the problem(s) and if they fail to correct the problem(s), the STATE may terminate this Agreement.

INDIVIDUAL MEMBERS AND VOLUNTEERS OF THE FRIENDS OF THE FUTURE

The FOF shall be solely responsible for the actions of its members and volunteers who perform the responsibilities of the FOF under this Agreement.

TERM & MODIFICATION OF AGREEMENT

The term of this Agreement is for a period of five (5) years beginning on the effective date of the Agreement. Either party may terminate this Agreement after providing the other party with thirty (30) days written notice. This Agreement may be amended only in writing signed by both the STATE and the FOF.

IN WITNESS WHEREOF, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written. By signing, the person indicates they have the requisite authority to enter into this Agreement on behalf of the entity indicated.

STATE

(Signature)

(Print Name)

Chairperson
Board of Land & Natural Resources

(Print Title & Organization)

(Date)

FRIENDS OF THE FUTURE

(Signature)

(Print Name)

(Print Title & Organization)

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

Approved by the Board of Land and Natural Resources at its meeting held on Oct. 23, 2015

ACKNOWLEDGMENT

STATE OF _____)

: SS.

_____ COUNTY OF _____

On this _____ day of _____, 20____, before me appeared _____, to me known, to be the person described in and, who, being by me duly sworn, did say that he/she is the _____ of _____, the party named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the _____, and acknowledges that he/she executed said instrument as the free act and deed of the _____.

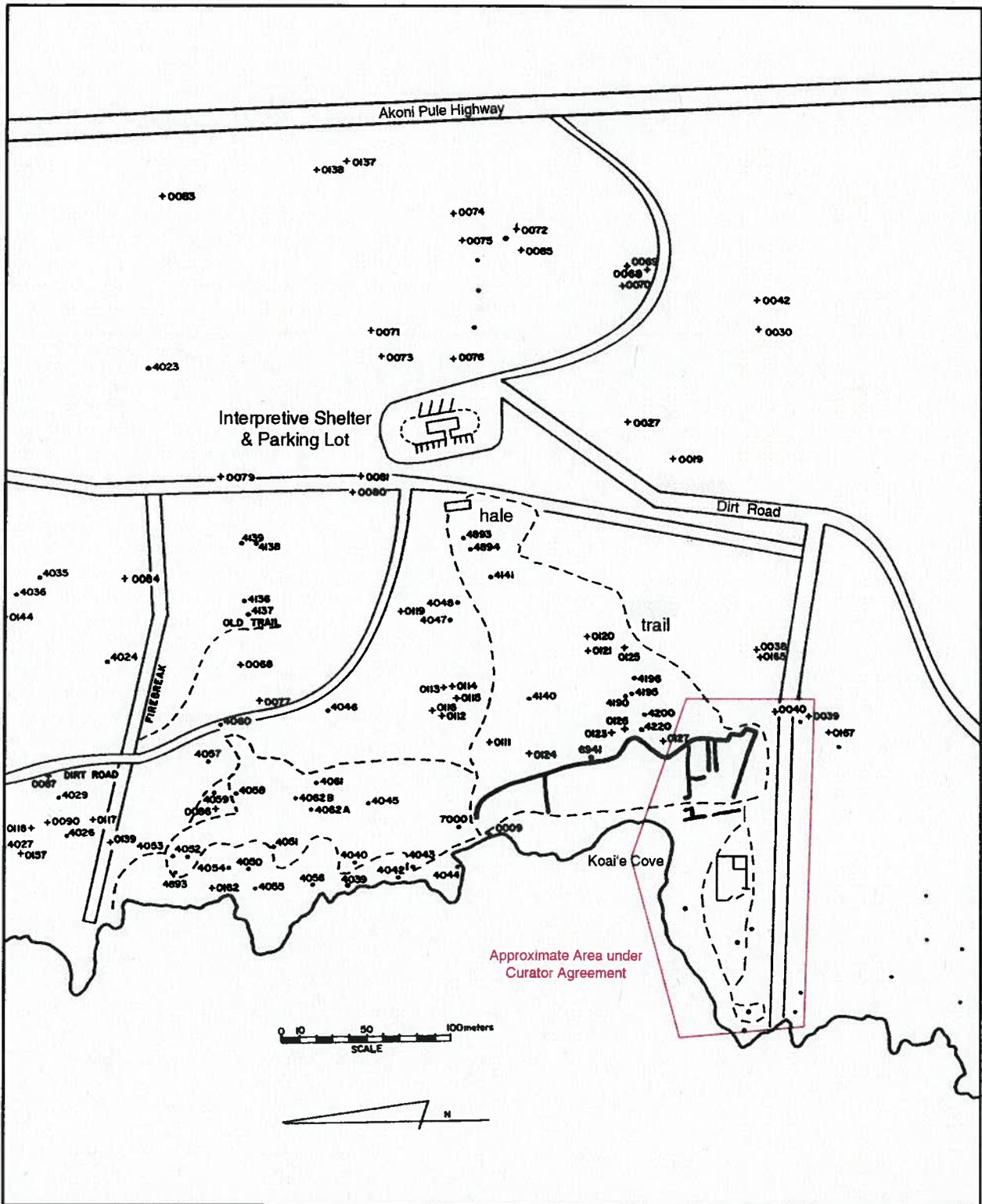
(Signature)

(Print Name)

(Notary Seal)

Notary Public, State of _____

My commission expires: _____



ATTACHMENT 1

The Koai'e Cove area of Lapakahi State Historical Park encompassed under the agreement.

AGREEMENT FACT SHEET & VOLUNTEER WAIVER

Park/Site: _____

Name of Group or Organization: _____

Designated Volunteer Supervisor(s) and their contact numbers:

1. _____

2. _____

If you are a 501(C-3) non-profit, please include your ID number and date of incorporation:

ID No.: _____ Date: _____

Date of Agreement: _____

List members who are regularly involved in curator activity and titles if applicable:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____

Work Schedule:

Emergency Contacts (list names, telephone, pager or cellular numbers, in priority order):

1. _____

2. _____

STATEMENT OF FACT SHEET & VOLUNTEER LIST

Page Size

Name of Group or City Section

Assigned Volunteer Paper (is it?) and their contact numbers

1
2

If you are a 501(c)(3) non-profit, please include your ID number and date of incorporation

ID No

Date of Assessment

List members who are regularly involved in center activity and their applicable

1
2
3
4
5
6
7
8
9
10
11

Work Schedule

Emergency Contact (list name, telephone, pager or cellular number, in primary order)

1
2



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

RELEASE OF LIABILITY

Name: _____ **Phone:** _____

Address: _____

I have requested the Department of Land and Natural Resources to allow me or my child to engage in the following activity or activities on State of Hawaii property known as the Lapakahi State Historical Park (hereinafter "Park"): (Description of activity) _____ for a period of time starting on _____ and ending on _____. I agree and acknowledge that my or my child's SAFETY is at moderate to high risk and that I accept RESPONSIBILITY. I fully understand, and by my signature acknowledge that:

I recognize and acknowledge that there are certain inherent risks and dangers involved with the above-described activity or activities at the Park involve certain inherent risks including but not limited to risk of possible injury or death and understand that the following conditions, hazards, or dangers may exist:

• gusty winds	• dense, tangled vegetation
• sharp and/or slippery rocks	• thorny plants
• stinging or biting insects and spiders	• work on or near steam and ocean water
• portable or no bathroom facilities	• wet or slippery roads
• no potable drinking water	• herbicides
• steep drop-offs	• paint, fuel, and oil fumes
• rugged terrain	• work in hunting area
• sharp tools	• wild animals
• lack of nearby medical facilities	• flash floods
• steep and slippery trail and river crossings	• lack of reliable communication service (including no telephone service)
• harsh weather conditions (ranging from hot and humid to wet and cold)	• diseases caused by water, air, or animal vectors

To the extent that my activities may involve the use of motorized tools, hand tools, and/or handling of herbicides, I acknowledge that there are certain inherent risks and dangers involved in such activities, which include (but are not limited to) risk of possible serious bodily injury, death, or poisoning.

Knowing that the above-described activity or activities at the Park may present certain risks and dangers to me or my child, including A RISK OF SERIOUS BODILY HARM OR DEATH, I nevertheless permit myself or my child to engage in the above-described activity or activities at the Park. I voluntarily ASSUME THE RISK OF INJURY OR LOSS created by the above-described conditions, hazards, and dangers at the Park.

With full knowledge of said conditions, hazards, and dangers, I RELEASE AND AGREE TO INDEMNIFY AND HOLD HARMLESS the State of Hawaii, and any and all of its officers, employees, and agents, for death or injury to me or my child or damage to or destruction of any of my or my child's property resulting from the conditions, hazards, and dangers listed above.

In consideration for allowing me or my child to engage in the above-described activity or activities at the Park which I have requested, I, for my heirs, beneficiaries, executors, and administrators, REMISE, RELEASE, AND FOREVER DISCHARGE the State of Hawaii, and any and all of its officers, employees, and agents, acting in their official capacities, from any and all claim(s), demand(s), or cause(s) of action on account of my or my child's death or personal injury or on account of any injury to my or my child's property which may occur from my or my child's negligence, hazards listed herein, or an unforeseeable event, during my or my child's activity or activities at the Park described above.

I understand and acknowledge that the provisions of Chapter 90, Hawaii Revised Statutes, do not apply to me or my child's activities at the Park.

I have read the above waiver and hereby release the State of Hawaii, its officers, employees, agents, and assigns from any and all liability that may result from my above-described activity or activities at the Park.

Signature: _____ Date: _____

Printed Name: _____

Signature of Parent or Legal Guardian: _____

Printed Name: _____ Date: _____

Minor's Name(s): _____